

**REPORT OF THE OFFICE OF COUNSEL
TO THE N.C. STATE BAR COUNCIL
JANUARY 24, 2020**

ATTORNEY CLIENT ASSISTANCE PROGRAM

During the fourth quarter of 2019, ACAP staff responded to 1,937 phone calls from members of the public and contacted 389 lawyers in efforts to resolve concerns expressed by members of the public. Staff also responded to 1,898 emails and 808 letters from inmates. During this same quarter in 2018, ACAP staff responded to 2,767 phone calls from members of the public and contacted 586 lawyers in efforts to resolve concerns expressed by members of the public. Staff also responded to 796 emails and 522 letters from inmates.

The State Bar received 111 requests for fee dispute resolution during the fourth quarter, all of which were assigned to the two State Bar facilitators. During the same quarter of 2018, the office received 146 requests for fee dispute resolution with the two State Bar facilitators being assigned 128 files with the remaining 18 being assigned to district bar committees.

GRIEVANCES

In 2016, 1,375 grievance files were opened. In 2017, 1,305 grievance files were opened. In 2018, 1,247 grievance files were opened. In 2019, 1254 grievance files were opened.

As of January 16, 958 grievances were pending. One hundred twenty-six grievances were stayed. Sixty-two pending files were in the judicial district grievance committees or had been returned by the district grievance committees within the past 30 days. The OOC had made its recommendation in 88 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 682 files in which no recommendation has yet been made, 116 were more than six months old. Since the October 2019 meeting, 208 files were dismissed by the Grievance chair or by the Grievance chair and a vice chair.

There were no inquiries about lawyer advertising in the 4th quarter of 2019.

D DISCIPLINE AND DISABILITY CASES

Completed Cases Before the Disciplinary Hearing Commission

The OOC completed four discipline and disability cases involving four lawyers in the DHC this quarter.

George L. Collins – 18 DHC 16

Collins, of Jacksonville, wrote a will making himself executor of his client's estate. He charged the estate \$750 per hour, collecting over \$250,000, charged an illegal or clearly excessive fee, misrepresented the services he would provide, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, did not properly maintain and disburse fiduciary funds, embezzled, engaged in conduct prejudicial to the administration of justice, committed perjury, made a false statement of material fact to a tribunal, and made a false representation to the Grievance Committee. He surrendered his license and was disbarred by the DHC.

Karen C. Wright – 19 DHC 15

Wright, of Charlotte, neglected many estate matters for many years, paid legal fees to her firm without obtaining required court approval, did not accurately report fees she paid to her firm, did not file statutorily-required accounts, did not timely close estates, and violated multiple trust account rules. She was suspended for five years. After serving two years of active suspension, Wright may apply for a stay of the balance upon showing compliance with numerous conditions.

Mark L. Bibbs – 19 DHC 19

Bibbs, of Raleigh, did not prepare accurate quarterly trust account reconciliations and did not maintain proper client ledgers for at least four years. He was suspended for eighteen months. The suspension is stayed for three years upon his compliance with numerous conditions.

Frank W. Erwin – 19 DHC 21

Erwin, of Jacksonville, engaged in improper communication with an unrepresented party, did not disclose his representation of an interested party, made false statements to the Grievance Committee, and filed false documents with the court. He was suspended for eighteen months.

Completed Grievance Noncompliance Actions before the DHC

Richard C. Poole – 19 DHC 16N

Upon the State Bar’s motion, the Chair of the DHC ordered Poole, of Greenville, to show cause why his law license should not be suspended pursuant to 27 N.C. Admin. Code 1B § .0135 for failure to provide information and trust account records to the Grievance Committee. Poole did not respond to the show cause order. He was suspended by the DHC and will not be eligible for reinstatement until he provides the requested information and records.

Completed Surrenders to the Council

David R. Payne of Marshall surrendered his law license and was disbarred by the Council. Payne pled guilty to violating 18 U.S.C. § 1014, a felony. He knowingly made false statements for the purpose of influencing the Bank of Asheville, an institution with accounts insured by the FDIC, in connection with a loan.

Completed Discipline and Disability Proceedings in the Courts

There were no completed discipline and disability proceedings in the courts in the 4th quarter of 2019.

Orders of Reciprocal Discipline

No orders of reciprocal discipline were entered this quarter.

Transfers to Disability Inactive Status

Jason D. Hegg, formerly of Jacksonville and currently living in Minnesota, was transferred to disability inactive status by the Chair of the Grievance Committee.

Interim Suspensions

The Chair of the DHC entered an order of interim suspension of the law license of Charlotte lawyer **Daniel Chappell Flint**. In October 2018, Flint was found guilty by a jury in California of violating Title 49, U.S.C. §§ 46314(a) and (b)(2), a felony. He entered a secured area of an airport carrying a pouch containing approximately \$148,145.00 that had not been screened by the TSA, falsely claiming that it was a diplomatic courier pouch and presenting documents purporting to support the false claim of diplomatic status. Flint was sentenced to 14 months incarceration.

The Chair of the DHC entered an order of interim suspension of the law license of Charlotte lawyer **Parker Russell Himes**. Himes was convicted of numerous drug offenses and is on supervised probation for twenty-four months.

Completed Petitions for Reinstatement/Stay - Uncontested

Michael P. Crowe – 16 DHC 9r

In June 2016 the DHC suspended Crowe, of Winston-Salem, for three years for numerous rule violations, including engaging in a conflict of interest, directing an assistant to execute a false notary, engaging in dishonest conduct, and engaging in conduct prejudicial to the administration of justice. He was reinstated by the DHC on October 22, 2019.

Completed Petitions for Reinstatement/Stay - Contested

Frederick Owens – 17DHC17r

In September 2018, the DHC suspended Owens, of Wilmington, because he charged and/or collected an illegal or clearly excessive fee, violated multiple trust account rules, did not properly supervise his nonlawyer assistant, and did not respond to the Grievance Committee. The order of discipline allowed Owens to seek a stay of the balance, after serving thirty days active suspension, upon demonstrating compliance with enumerated conditions. On December 10, 2019, the DHC denied his motion for a stay.

David Shawn Clark of Hickory was disbarred in 2013. Clark had sex with a client, made false statements to a court and to the Grievance Committee, attempted to suborn perjury, was convicted of several criminal charges including communicating threats and obstruction of justice, intentionally disclosed client confidences, and engaged in a conflict of interest. The DHC recommended denial of his petition for reinstatement. Clark appeal to the Council. At its October 25, 2019 meeting, the Council denied Clark's petition for reinstatement. His appeal to the Court of Appeals is pending.

Completed Motions to Show Cause

In April 2018, the DHC suspended **Philip S. Adkins** for failing to manage his trust account in compliance with the Rules of Professional Conduct. The suspension was stayed for two years. In November 2019, the State Bar filed a motion to lift the stay and activate the suspension, alleging that Adkins did not comply with the conditions of the stay. After the State Bar moved to lift the stay, Adkins brought his conduct into compliance with the conditions of the stay. By consent of the parties, the DHC extended the stay an additional eighteen months.

Douglas P. Connor – 19 CVS 10893 (Wake County Superior Court)

On 13 August 2019, the court entered an order enjoining Connor, of Mount Olive, from handling entrusted funds and from serving in any fiduciary capacity. Connor did not resign as trustee of a testamentary trust when the injunction was entered. The court ordered Connor to show cause why he should not be held in civil contempt. After hearing, the court found that Connor’s lack of compliance was not willful and directed him to resign from the trusteeship within ten days of entry of the court’s order.

TROs and Preliminary Injunctions

The Wake County Superior Court issued a preliminary injunction prohibiting **Janet P. Reed** of Jacksonville from handling entrusted funds.

PENDING DISCIPLINE AND DISABILITY CASES

Bradley R. Lamb – 07 DHC 28

Lamb, formerly of Pittsboro, was convicted in Florida of promoting the sexual performance of a child, lewd or lascivious exhibition, and solicitation of a child over the Internet. In 2007, the chair of the DHC entered an order of interim suspension of his law license. The DHC case was stayed while Lamb served his fifteen-year prison sentence in Florida. Lamb has now been released but failed to file an answer to the DHC complaint within the required time after his release. Default has been entered and a motion for entry of an order of discipline is pending.

Robert Melville, Jr. – 13 DHC 9

The Chair of the DHC entered an order of interim suspension of the law license of Lake Waccamaw lawyer Robert Melville. Melville pled guilty in federal court to the felonies of conspiracy to commit bank and wire fraud. The DHC complaint has not been filed because Melville was transferred to disability inactive status.

Michael J. Anderson – 15 DHC 47 & 15 DHC 47D

It is alleged that Anderson, of Wilson, provided fabricated and misleading documents to the State Bar and/or did not correct a misapprehension he caused by such documents, did not keep proper trust account reconciliation records, did not respond to the Grievance Committee, made statements with no substantial purpose other than to embarrass a third person, engaged in undignified or discourteous conduct degrading to a tribunal, and engaged in conduct prejudicial to the administration of justice. The hearing panel found probable cause to believe Anderson is disabled, stayed the disciplinary proceeding pending resolution of the disability issue, and repeatedly ordered Anderson to undergo evaluation. Anderson defied several DHC orders requiring him to undergo evaluation. The DHC stayed the disability case until Anderson complies with those orders. In May 2016, the Wake County Superior Court entered a preliminary injunction prohibiting Anderson from practicing law until the discipline and disability cases are concluded.

Joseph Lee Levinson - 16 DHC 11

Levinson, of Benson, pled guilty to the felony offense of conspiracy to obtain money in the custody of a bank by false pretenses by, among other devices, misrepresenting to lenders that his client was purchasing houses as rental property when his client was actually purchasing them as marijuana grow houses for a large-scale drug trafficking operation. In January 2016, the Chair of the DHC entered an order of interim suspension of his law license. The State Bar is pursuing discipline based upon the conviction and upon all of the underlying conduct. Hearing is scheduled for March 26-27.

Craig M. Blitzer – 17 DHC 23

Blitzer, of Reidsville, was the elected district attorney of Rockingham County. It is alleged that Blitzer allowed his staff to take online academic tests for Blitzer's wife on State time. Blitzer pled guilty in Wake County Superior Court to misdemeanor willful failure to discharge duties. In August 2017, the Chair of the DHC entered an order of interim suspension of his law license. The OOC will file the DHC complaint when it finishes reviewing the lengthy investigative report.

Wendelyn R. Harris – 18 DHC 14 & 18 DHC 14D

It is alleged that Harris, of Virginia and formerly of Raleigh, submitted a purported order to the Department of Motor Vehicles on which she forged a judge's signature and that she blamed her non-lawyer assistant for these actions. Harris' assistant was convicted of forgery at a trial in which it is alleged that Harris testified falsely. Harris was automatically transferred to disability inactive status when she raised the issue of disability. After a hearing, Harris was continued on disability inactive status. The disciplinary action will be stayed until Harris is returned to active status.

Michael H. Griffin – 18 DHC 20

It is alleged that Griffin, formerly of Shelby and now of Florida, misappropriated entrusted funds. He is enjoined from handling entrusted funds. The discipline case is stayed because the panel ordered a disability proceeding pursuant to 27 N.C. Admin. Code 1B §.0122(c)(2). Hearing on disability is scheduled for January 28.

Robert Lewis – 18 DHC 36

Lewis, of Raleigh, was sanctioned by the bankruptcy court because he did not file required pleadings, filed pleadings containing false and misleading representations, charged an impermissible fee, did not maintain a client ledger of entrusted funds, affixed his clients' electronic signatures to pleadings and other documents without their consent, did not adequately communicate with his clients, disobeyed the rules of a tribunal, and did not report his misconduct to the State Bar as the bankruptcy court ordered him to do. It is also alleged that Lewis violated multiple trust account rules. Hearing is scheduled for May 28.

Patrick Megaro – 18 DHC 41

Megaro, of Orlando, Florida, represented two clients with IQs in the 50s, both of whom were sentenced to death and imprisoned for decades after being wrongfully convicted of the rape and murder of a child. They have now been exonerated. It is alleged that Megaro embezzled his clients' money, charged a "nonrefundable" fee, charged an excessive fee, made misrepresentations to his clients, made misrepresentations to tribunals, aided others in the unauthorized practice of law, and failed to act with diligence. Hearing was continued and has not been rescheduled.

H. Trade Elkins – 18 DHC 50

Elkins, of Hendersonville, pled guilty to one felony count of wire fraud in violation of 18 U.S.C. § 1343. Elkins was sentenced to 24 months of imprisonment followed by supervised release and ordered to pay restitution of \$545,738.90. In February 2019, the Chair of the DHC entered an order of interim suspension of his law license. The DHC complaint has not been filed.

Daniel Flint – 19 DHC 4

Flint, of Charlotte, was found guilty by a jury in federal court in California of entering an airport area in violation of security requirements, a felony. The State Bar sought an order of interim suspension based upon the conviction. Flint filed a lawsuit against the State Bar and the DHC in Mecklenburg County Superior Court seeking to enjoin the DHC from entering an interim suspension before he was sentenced. The court dismissed his lawsuit. Flint has now been sentenced to fourteen months in

prison. In October 2019, the chair of the DHC entered an order of interim suspension of his law license. The State Bar is pursuing discipline based upon the conviction and upon the underlying conduct. Hearing has not been scheduled.

Brandon Graham – 19 DHC 5

It is alleged that Graham, of Gaston County, possessed heroin, methamphetamine, and drug paraphernalia and made false statements to police during a traffic stop. He pled guilty to possession of methamphetamine on October 1, 2018. He obtained a conditional discharge pursuant to N.C. Gen. Stat. 90-96(a). In April 2019, the Chair of the DHC entered an order of interim suspension of his law license. Graham successfully complied with the terms of his conditional discharge and his criminal case was dismissed. The State Bar is pursuing disciplinary action based upon the underlying conduct. Hearing is scheduled for February 24.

Robin Dale Fussell – 19 DHC 7

It is alleged that Fussell, of Charlotte, engaged in misconduct in connection with real estate closings, including making a false statement to a financial institution, closing transactions knowing information provided to the lenders was not accurate or was no longer accurate, recording a deed without receiving required consideration, preparing and securing execution of a false HUD-1 Settlement Statement, and assisting the recipient of the property in using the improperly-obtained property as collateral. Hearing is scheduled for May 19-22.

Hayley C. Sherman – 19 DHC 8

Sherman, of Mayodan, pled guilty to the state felony offenses of possession of marijuana with intent to manufacture, sell, or deliver in violation of N.C. Gen. Stat. § 90-95(a) (three counts); sale or delivery of marijuana in violation of N.C. Gen. Stat. § 90-95(a) (two counts); conspiracy to sell or deliver marijuana in violation of N.C. Gen. Stat. § 90-98 (two counts); maintaining a store, dwelling, vehicle, boat or other place for use, storage, or sale of controlled substances in violation of N.C. Gen. Stat. § 90-108(a)(7) (three counts); and one count of possession of a Schedule IV substance with intent to manufacture, sell, or deliver in violation of N.C. Gen. Stat. § 90-95(a); and to two counts of the state misdemeanor offense of possession of marijuana paraphernalia in violation of N.C. Gen. Stat. § 90-113.22(a). In February 2019, the Chair of the DHC entered an order of interim suspension of her law license. The State Bar is pursuing discipline based upon the convictions and the underlying conduct. Hearing is scheduled for May 1.

Nikita V. Mackey – 19 DHC 9

It is alleged that Mackey, of Kings Mountain, collected legal fees and engaged in the unauthorized practice of law while his law license was administratively suspended, neglected and did not communicate with two clients, did not refund unearned fees, made a false representation on his notarized petition for reinstatement, did not participate in good faith in the mandatory fee dispute resolution process, and did not respond to the Grievance Committee. Hearing has not been scheduled.

David B. Hefferon – 19 DHC 11

It is alleged that Hefferon, of Charlotte, provided legal services to a client who was homeless, vulnerable, and at risk of losing custody of her child. Hefferon paid for hotel rooms before the client's court dates and, on at least one occasion, visited her in the hotel room bringing alcohol for them to share. Hefferon admitted that he kissed the client and touched her breast. Hearing was continued and has not been rescheduled.

Andrew LeLiever – 19 DHC 12

It is alleged that LeLiever, of Sanford, did not adequately communicate with clients, did not act with diligence, did not explain his fee, did not inform his client that sanctions had been imposed against her, did not participate in the State Bar’s fee dispute resolution program, and did not timely respond to the Grievance Committee. Hearing is scheduled for March 5.

John C. Snyder – 19 DHC 13

It is alleged that Snyder, of Matthews, neglected and did not communicate with his client, made false statements to his client and to opposing counsel, did not return his client’s file, knowingly made a misrepresentation or omission to the Grievance Committee, filed frivolous motions and pleadings in a civil case, made a false representation to a tribunal, and did not respond to the Grievance Committee. Hearing has not been scheduled.

Gregory A. Newman – 19 DHC 14

It is alleged that Newman, District Attorney for Prosecutorial District 42, falsely represented to the court that the victim of an alleged sexual assault had been notified of a plea and made false representations to the State Bar about the underlying criminal case. Hearing has not been scheduled.

Parker Russell Himes – 19 DHC 17

It is alleged that Himes, of Charlotte, committed and was convicted of numerous drug offenses. The State Bar is pursuing discipline based upon the convictions and the underlying conduct. Hearing is scheduled for February 28.

Charles L. Morgan, Jr.—19 DHC 18

It is alleged that Morgan, of Charlotte, grossly mismanaged his trust account and violated an injunction prohibiting him from handling entrusted funds. Hearing has not been scheduled.

Louis P. Woodruff – 19 DHC 20

It is alleged that Woodruff, of Raleigh, did not supervise his spouse/office manager, who misappropriated funds from Woodruff’s trust account. Hearing is scheduled for April 1.

Matthew Coxe – 19 DHC 22

It is alleged that Coxe, of Jacksonville, misappropriated entrusted funds, did not reconcile his trust accounts, served as attorney-in-fact for an elderly gentleman while he was enjoined by the court from acting as a trustee or attorney-in-fact, used the gentleman’s funds to pay his personal expenses, and otherwise mismanaged the gentleman’s funds. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

Nikita Mackey – 19 DHC 23

It is alleged that Mackey, of Kings Mountain, neglected and failed to communicate with a client, vandalized cars owned by his former spouse and her father by discharging a firearm into them, negotiated a check upon which he forged his former spouse’s endorsement, and slept during a substantial portion of a client’s federal criminal trial. Hearing has not been scheduled.

Emily Moore Tyler – 19 DHC 24

It is alleged that Moore, of Raleigh, altered a notary acknowledgement on a filed pleading and lied to judges about it repeatedly. Hearing has not been scheduled.

Cabell J. Regan – 19 DHC 25

It is alleged that while serving as attorney-in-fact for a client, Regan, of Pittsboro, breached his fiduciary duty, engaged in dishonest conduct, embezzled fiduciary funds, collected an excessive fee, and entered into a business transaction with the client. It is also alleged that Regan misappropriated client funds, did not properly maintain and disburse client funds, and did not maintain required trust account records. He is enjoined from handling entrusted funds and from serving in any fiduciary capacity. Hearing has not been scheduled.

Joseph H. Forbes – 20 DHC 3

It is alleged that Forbes, of Elizabeth City, willfully failed to account for and pay over to the IRS payroll taxes required to be withheld from the paychecks of his law firm’s employees. Hearing has not been scheduled.

Yuanyue Mu – 20 DHC 4

It is alleged that Mu, of Cary, did not promptly deposit entrusted funds, did not adequately supervise an assistant to ensure prompt disbursement of entrusted funds, disbursed funds from his trust account for clients in excess of any funds held for those clients in the trust account, did not promptly reimburse the resulting deficiencies to the trust account, and did not conduct required monthly and quarterly trust account reviews and reconciliations. Hearing has not been scheduled.

William Morgan – 20 DHC 5

It is alleged that Morgan, of Elizabeth City, did not conduct required quarterly trust account reviews and reconciliations, did not maintain records sufficient to identify the owners of funds in his trust account belong, did not adequately supervise assistants to whom he delegated trust account duties, did not ensure entrusted funds were deposited into his trust account, did not promptly correct the resulting deficiencies in his trust account, and did not promptly disburse entrusted funds. Hearing has not been scheduled.

Kenneth Ording – 20 DHC 6

It is alleged that Ording, of Hampstead, did not promptly deposit entrusted funds, did not adequately supervise assistant(s) to whom he delegated trust account duties, did not conduct required monthly and quarterly trust account reviews and reconciliations, disbursed funds from his trust account for clients in excess of any funds held for those clients in the trust account, did not promptly reimburse the resulting deficiencies to the trust account, had bank charges paid with entrusted funds, did not promptly disburse entrusted funds, commingled his own funds with entrusted funds, did not always create and maintain client ledgers, and did not ensure client ledgers were accurate. Hearing has not been scheduled.

Pending Grievance Noncompliance Actions before the DHC

Harold R. Crews – 20 DHC 2 N

The State Bar’s petition is pending for entry of an order requiring Crews, of Walkertown, to show cause why his law license should not be suspended pursuant to 27 N.C. Admin. Code 1B.0135 for failure to provide information to the Grievance Committee.

Pending Petitions for Reinstatement/Stay - Uncontested

There are no pending uncontested petitions for reinstatement or stay.

Pending Petitions for Reinstatement/Stay - Contested

There are no pending contested petitions for reinstatement or stay.

Pending Motions to Show Cause

There are no motions to show cause pending before the DHC.

Paul B. Welch - 19 R 310 (Henderson County Superior Court)

Welch represented the defendant in a homicide prosecution. The court ordered Welch to show cause why he should not be disciplined for violating Rules 3.3(a)(3), 3.4, 8.4(a), (c) & (d) for redacting a portion of an expert's notes and providing the redacted notes to the district attorney without advising the district attorney of the redaction.

Pending Surrenders to the Council

Lisa Blalock, of Laurinburg, misappropriated entrusted funds. She is enjoined from handling entrusted funds. She has tendered her affidavit of surrender for consideration by the council at its January 24 meeting.

APPEALS IN DISCIPLINE & DISABILITY CASES

Completed Appeals

Robert N. Weckworth, Jr. – 16 DHC 22

In October 2017, the DHC censured Robert Weckworth of Greensboro. The DHC concluded that Weckworth communicated with a represented adverse party and had improper *ex parte* communications with a judge. The Court of Appeals issued an unpublished opinion affirming the rule violations but remanding to the DHC for additional findings regarding the appropriate discipline. Hearing on remand has not been scheduled.

Pending Appeals

In re Phillip Entzminger - 17 CRS 1930 (Pitt County)

The Pitt County Superior Court ordered Entzminger, an assistant district attorney, to show cause why he should not be held in criminal contempt and why he should not be disciplined for violating the Rules of Professional Conduct. The show cause order alleged that Entzminger filed a document showing disregard for the dignity of the court, demonstrated undignified and discourteous conduct that was degrading to the court and that bred disrespect for the court and the legal profession, and made false statements to the court. The court appointed the Office of Counsel to prosecute. The court acquitted Entzminger of contempt but concluded that he violated the Rules of Professional Conduct. The court suspended Entzminger for two years with the possibility of a stay after he serves the first six months of the suspension. Entzminger appealed. The Court of Appeals affirmed in part, reversed in part, and remanded for a new hearing on the appropriate discipline. Entzminger's petition for discretionary review is pending with the North Carolina Supreme Court.

NC State Bar v. Venus Springs - 18 DHC 25

Springs, of Mecklenburg County, posted on her YouTube channel a link to the video deposition of an opposing party's representative. The DHC concluded that posting the video served no substantial purpose other than to humiliate or embarrass the witness. Springs maintained the link on her YouTube channel for eleven months after a federal court ordered her to remove it. The DHC reprimanded her. She appealed. Her brief is due January 21.

NC State Bar v. Alan Phillips - 18CVS5645 (Wake County)

Phillips was a licensee and was the respondent in a grievance alleging that he engaged in the unauthorized practice of law in other jurisdictions. Phillips filed an objection and motion to quash a subpoena issued by the Grievance Committee. The President of the State Bar issued an order requiring Phillips to produce the subpoenaed documents. He did not do so. The State Bar filed this action seeking a mandatory injunction enforcing the subpoena. The State Bar served Phillips with discovery requests in this action. Phillips objected to the discovery requests, contending that the State Bar was prohibited by an alleged conflict of interest from investigating a grievance against him because, while the grievance against him was pending, he filed grievances against State Bar officers, councilors and employees. The trial court overruled Phillips' objection and ordered him to provide complete discovery responses. Phillips gave notice of appeal but did not obtain a stay of the order and did not comply with the order. In a series of hearings, Phillips was repeatedly held in contempt. He was imprisoned four times for a total of 79 days. The court also disbarred Phillips, effective July 1, 2019. Phillips filed notice of appeal. He did not file a brief by the January 8, 2020 due date. The Court of Appeals has not ruled on his motion to extend the time within which his brief was due.

NC State Bar v. Clinton Moore - 18 DHC 43

Moore, of Charlotte, obtained more than \$14,000 from a couple as "good faith" funds to negotiate with the Small Business Administration and instead used the funds for his own benefit. Moore also neglected clients, including an inmate who paid him \$5,000 to handle an MAR. He was disbarred by the DHC. He appealed. His proposed record on appeal is due January 27.

North Carolina State Bar v. Erica Erickson - 18 DHC 46

The DHC concluded that Erickson, of Brevard and Hendersonville, knowingly notarized false or fraudulent acknowledgements and pled guilty to related criminal offenses, filed fraudulent documents with the court and fraudulently obtained signatures on powers of attorney. She was disbarred by the DHC. She appealed and has ordered the transcript.

David Shawn Clark - 19BCR1

Clark, of Hickory, was disbarred in 2013. He had sex with a client, made false statements to a tribunal and to the Grievance Committee, attempted to suborn perjury, was convicted of several criminal charges including communicating threats and obstruction of justice, intentionally disclosed client confidences, and engaged in a conflict of interest. The DHC recommended denial of his petition for reinstatement. Clark appeal to the Council. At its October 25, 2019 meeting, the Council voted to deny his petition for reinstatement. Clark appealed to the Court of Appeals. His brief is due January 21.

TRUST ACCOUNT COMPLIANCE PROGRAM

Fifty lawyers have completed the TAC Program since its inception. Four lawyers accepted offers to participate in the TAC Program after the October 2019 Quarterly Meeting. Leonor currently supervises twenty-seven participants. Leonor also monitors twenty-four DHC defendants whose stayed suspensions include trust account compliance conditions and oversees compliance with random audit corrections.

AUTHORIZED PRACTICE

The Authorized Practice Committee opened 15 new files this quarter. The committee will address 8 files at its January meeting.

The OOC continues to work with the Consumer Protection Division of the Attorney General's Office dealing with several out-of-state lawyers and law firms that promote debt adjusting and loan modification schemes. With limited exceptions, debt adjusting is illegal in North Carolina. Numerous marketing firms and lawyers engage in this practice.

Pending, Recently Completed and Contemplated Authorized Practice Litigation

Capital Associated Industries, Inc. v. Josh Stein in his capacity as Attorney General of the State of North Carolina; Nancy Lorrin Freeman, in her official capacity as District Attorney for the 10th Prosecutorial District of the State of North Carolina; and J. Douglas Henderson, in his official capacity as District Attorney for the 18th Prosecutorial of the State of North Carolina (US District Court, MDNC). CAI is a trade association consisting of small and medium-sized businesses. CAI assists its members with personnel management issues. CAI wants to hire lawyers to provide legal advice and legal services to its members. The State Bar's Ethics Committee issued an ethics advisory opining that doing so would violate North Carolina's statutory prohibitions against the unauthorized practice of law. CAI sought a declaration that N.C. Gen. Stat. §§ 84-4 and 84-5 violate the United States and North Carolina constitutions as applied to it and sought an injunction prohibiting the original defendants from enforcing the statutes against it. CAI did not seek damages but sought attorney fees, "disbursements" and costs. The court allowed the State Bar to intervene. The court granted the State Bar's motion for summary judgment on all claims. The Fourth Circuit affirmed. On December 13, the Supreme Court denied CAI's petition for writ of *certiorari*. Van Laningham Duncan and the North Carolina Solicitor General represented the State Bar.

NC State Bar v. Michael Asen. In July 2017, the Executive Committee authorized the OOC to file a lawsuit against Michael Asen, a New York attorney who offers to provide legal services in North Carolina to retail stores that have been victimized by shoplifters. The parties have agreed upon terms of a consent resolution.

NC State Bar v. National Debt Relief. In April 2018, the Executive Committee authorized the OOC to file a lawsuit against National Debt Relief, a New York business that offers debt adjusting to consumers. NDR has been offering to defend consumers in lawsuits brought by creditors. At the October 2019, meeting the Executive Committee authorized counsel to accept NDR's proposed consent agreement.

Prepaid Legal Services Plan Registration

The State Bar received one initial registration form this quarter, for Debt Cleanse Legal Plan. Staff is reviewing the materials.

OTHER LITIGATION IN THE STATE AND FEDERAL COURTS

Ballentine International Express Trust/Trustee Board by Trustee v. State of North Carolina et al (NC Industrial Commission). This is a purported tort claim against numerous defendants. Ballentine is a purported trust formed in an effort to defeat a foreclosure. Ballentine alleges the foreclosure was wrongful because the grantor of the deed of trust conveyed the property to the trust and the trustee cancelled the deed of trust. Ballentine contends that the clerk of court and a lawyer for the trustee were agents of the State Bar because they are licensed to practice law in North Carolina but alleges no facts that could sustain that contention. Ballentine alleges no acts or omissions by the State Bar. The deputy commissioner dismissed all claims against all defendants on his own motion. The Full Commission held that the deputy commissioner lacked authority to dismiss the State Bar claim on his own motion and remanded to the deputy commissioner. Meanwhile, the petitioner appealed dismissal of the claims against the other defendants to the North Carolina Court of Appeals, which dismissed those appeals. The State Bar's motion to dismiss is pending before the Full Commission. The Attorney General represents the State Bar.

Daniel Chappell Flint v. NC State Bar, DHC and Margaret Cloutier (Mecklenburg County Superior Court). Flint filed this lawsuit on March 27, 2019 against the State Bar, a State Bar deputy counsel, and the DHC. Flint was the defendant in a federal criminal prosecution and is the defendant in a pending DHC case. When this lawsuit was filed, Flint had been found guilty by a jury but had not yet been sentenced. Flint contended that deputy counsel fraudulently or negligently misrepresented that the State Bar would not seek an interim suspension of his law license until he had been sentenced. He sought to enjoin the State Bar from seeking, and the DHC from entering, an interim suspension "prior to entry of a certified conviction." He also sought actual and punitive damages for alleged negligent infliction of severe emotional distress, as well as costs and attorney fees. The court denied Flint's motion for TRO and granted defendants' motions to dismiss. The DHC entered an order of interim suspension on October 11. The OOC represented the State Bar and deputy counsel. The Attorney General represented the DHC.

Richard Polidi v. Carmen Bannon (Wake County Superior Court). Polidi surrendered his law license and was disbarred by the Wake County Superior Court in 2014. In July 2017, he filed this action against Carmen Bannon, State Bar deputy counsel, in her official and individual capacities. Polidi makes vague, generalized allegations relating to his decision to surrender his law license and consent to be disbarred. He has never served Bannon. If he does, the OOC will represent her.

Richard Polidi v. Colon Willoughby et al (Wake County Superior Court). Polidi surrendered his law license and was disbarred by the Wake County Superior Court in 2014. He filed this action in July 2017 against Colon Willoughby in his official and individual capacities, against Katherine Jean in her official and individual capacities, and against many others. It is unclear whether Polidi sued Colon Willoughby in his official capacity as the former elected district attorney of Wake County or in his official capacity as a State Bar councilor. Willoughby is now a State Bar officer but was not an officer when this lawsuit was filed. Polidi makes vague, generalized allegations of wrongful

conduct in connection with his decision to surrender his law license and consent to be disbarred. He has never served Willoughby or Jean. If he does, the OOC will represent them.

Valerie Arroyo v. Daniel Zamora, Chad Diamond, North Carolina State Bar Association et al (U.S. District Court, WDNC). Arroyo filed a grievance that was dismissed. Her petition for contested case hearing at the Office of Administrative Hearings was dismissed. She filed this action against two lawyers, “the North Carolina State Bar Association,” the Mecklenburg County Clerk of Court, the Judicial Standards Commission, the Ethics Commission and NCDOJ. The complaint was dismissed as frivolous before the State Bar learned it had been filed. Arroyo’s motions for reconsideration and to vacate, alter and amend the judgment were denied. The court entered a gatekeeper order against Arroyo. Arroyo gave notice of direct appeal to the United States Supreme Court. There is no indication that the Court ever addressed that purported appeal. The Fourth Circuit dismissed *per curiam* Arroyo’s appeal. Arroyo filed a petition for writ of *certiorari* to the United States Supreme Court, which the Court denied on October 7.

Valerie Arroyo v. Daniel Zamora et al (NC Industrial Commission). This is a purported tort claim alleging that the State Bar failed to “stop, act or prosecute” a grievance respondent. The Attorney General represents the State Bar.

Kelvin Exum v. NC State Bar (NC Office of Administrative Hearings). Exum filed a grievance, which was dismissed. Exum demanded an explanation for the dismissal. The State Bar sent Exum a letter in response. Exum filed this purported tort claim alleging that the letter was unsolicited, that it contains false and unfounded information about him, and that it served no purpose other than to embarrass and harass him. The ALJ dismissed the claim. The Attorney General represented the State Bar.

Derek Olivaria v. NC State Bar (NC Industrial Commission). Olivaria filed this purported tort claim alleging that three lawyers engaged in misconduct in an eviction action. Petitioner does not allege any act or omission by the State Bar. The State Bar’s motion to dismiss is pending. The Attorney General represents the State Bar.

Christopher Livingston v. NC State Bar, et al (Wake County Superior Court). In July 2016, the DHC suspended Livingston for five years. In January 2018, Livingston sued the State Bar and the 15th Judicial District Bar in federal court, claiming that the district bar was improperly using mandatory district bar dues. He later amended his complaint to add John Silverstein and Leonor Hodge and claim that they engaged in selective prosecution of him. (Silverstein chaired the Grievance Committee that referred the case to the DHC for trial and Hodge prosecuted the DHC case.) In February 2019, the federal court dismissed the lawsuit for lack of subject matter jurisdiction. One month later, Livingston filed the nearly identical complaint in Wake County Superior Court. He had summonses and alias and pluries summonses issued but never served any of them. The State Bar learned of the state court lawsuit in September 2019, when the trial court administrator instructed the parties to prepare a case management order. The State Bar informed the TCA that no defendant has been served or knew about the complaint and asked that the case be discontinued.

Client Security Fund Claims/Subrogation Cases

There are 29 new claims on the agenda for the Board's January meeting. No lawsuits are pending in superior court seeking reimbursement from a disbarred lawyer for payments made by the CSF.

Disbursement Cases

This quarter, the OOC obtained two orders from Wake County Superior Court directing the disbursement or escheatment of \$2,028.32 from the frozen trust accounts of suspended or disbarred lawyers. Another motion, to disburse \$9,129.27 from the frozen trust account of a disbarred lawyer, is pending.

Trusteeships

Trustees were appointed to wind down the practices of **Crystal Walker Redding** of Garner, who is unavailable to clients, **Robert C. Soles, Jr.** of Tabor City who is also unavailable to clients due to a disabling condition, and deceased lawyers **Patricia L. Wilson** of Linville and **Robert W. Detwiler** of Jacksonville.

The OOC helps all current trustees fulfill their duties and helps members of the public in locating files of deceased, disbarred, disabled, and missing lawyers.

APPEALS IN OTHER LITIGATION IN THE STATE AND FEDERAL COURTS

Completed Appeals

There were no other completed appeals in the state and federal courts this quarter.

Pending Appeals

There are no other pending appeals in the state and federal courts this quarter.

PERSONNEL

The Office of Counsel had no personnel changes this quarter.

MISCELLANEOUS

Jennifer volunteers as a judge for the Capital Area Teen Court diversion program and as a judge for collegiate mock trial competitions.

Josh continues to teach legal research and writing at Campbell Law. He regularly presents at NCBA Professionalism for New Attorneys programs and other CLEs. Josh also recently joined the Board of Governors of a local secondary school and is coaching his daughter's soccer team, the Knightdale Mustangs, to a winless record.

Maria regularly presents at NCBA Professionalism for New Attorneys programs.

Alex regularly teaches CLEs on ethics and technology. He recently volunteered as a judge for the Tobacco Road Invitational Tournament, a collegiate mock trial competition.

Leonor guest lectured at Campbell Law School on trust account management. Leonor continues to serve on the NCBA Professionalism Committee and on the 10th JD/WCBA Professionalism Committee, where she is chair.

Mary serves on the 10th Judicial District Bar Memorial Committee.

Carmen is an Associate Adjunct Professor of professional responsibility at UNC Law and President of the Wake County Bar Association. She also continues to serve as the OOC's liaison to the judiciary. In the last quarter, Carmen gave several CLE presentations in Wake County.

Barry and investigator Doug Miller have been working with Investor's Title to host wire fraud summits. The summits are designed to prevent wire fraud affecting trust accounts and to educate lawyers and their staffs about scam prevention. The latest summit was held November 14. Barry is also working with Investor's Title and the North Carolina Association of Realtors to offer wire fraud prevention CLEs for lawyers, paralegals and brokers. Barry continues to mentor a third-year law student in the Campbell Law Connections Mentorship Program.

Fern attended the 10th Judicial District Bar Grievance Committee annual meeting.

Katherine serves on the NCBA Professionalism and Women in the Profession committees.